

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5231 OF 2012
(Laxmibai Laximan Tondare and others Vs. Mangalbai Sudhakar Patil
and others)

Mr.P.G.Rodge, Advocate for the petitioners.
Mr.A.S.Shivpuje, Advocate for respondent Nos. 3 and 4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 12/07/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 15/06/2012 by which their application Exh.36 praying for recalling of 'No W.S.' order has been rejected.
2. Respondent No.1 is the original sole plaintiff. Respondent Nos. 2, 3 and 4 are original defendant Nos. 1 to 3.
3. Despite service of Court notice, respondent No.1/plaintiff has neither caused an appearance through an Advocate nor in person. This matter is pending hearing for 5 years and by order dated 05/07/2012, the suit has been stayed.
4. Upon considering the strenuous submissions of the learned

Advocate for the petitioner, I find that the petitioners had appeared on 20/10/2011 in the suit. 'No W.S.' order was passed on 22/03/2012 after about 5 months. Exhibit 36 was filed on 15/06/2012 for recalling 'No W.S.' order and the same has been rejected on the said date.

5. I find that the delay caused by the petitioners in not filing their written statement cannot be said to be inordinate. The Trial Court should have considered that a contest in a matter on merits is always expected and if undue delay is not caused, the defendants could be permitted to file their written statement by imposing costs, which could have been awarded to the sole plaintiff.

6. Considering the above, this petition is partly allowed. The impugned order dated 15/06/2012 is quashed and set aside and Exh.36 is partly allowed with the following directions :-

[a] The petitioners shall collectively pay costs of Rs.5,000/- to the original plaintiff by depositing the said amount before the Trial Court on or before 29/07/2017. On depositing costs, the plaintiff shall withdraw the said costs without any condition.

[b] The petitioners shall file their written statement, if not already placed on record, on or before 29/07/2017.

[c] If either of the above directions are not complied with, the impugned order dated 15/06/2012 shall stand restored and the defendants would not be entitled to file their written statement.

[d] The petitioner/defendant shall not seek extension of time.

(Ravindra V.Ghuge, J.)